

WHEN JUSTICE HARMS

Juvenile justice in Papua New Guinea

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An ongoing human rights crisis persists in Papua New Guinea ('PNG') — too many young people, finding themselves on the wrong side of the law, are being harmed by the criminal justice system. These young people aged seven to 18, or 'juveniles' as they are referred to in PNG,¹ are regularly physically and sexually assaulted by the police and Correctional Institutional Services ('CIS') officers, deprived of their liberty without good cause, and forced to serve custodial sentences in abject conditions while sharing cells with adults.²

How best to respond to juvenile offenders is a pressing concern for PNG as it is a predominantly young country — nearly half of the population are children³ — with increasing problems of urban violence, crime and civil unrest. Within both PNG and international media, blame for escalating law and order problems is generally attributed to 'raskols' — groups of 'disaffected urban youth between the ages of 16 and 24'.⁴ Yet the reality is that 'the vast majority of youth crimes are minor, property related offences'.⁵ However, even when accused of such minor offences, juveniles are often dealt with harshly by the police, courts and CIS because of the popular misconception 'that all young people in conflict with the law are "raskols" preying on the community'.⁶

These observations about the harsh treatment of juveniles have resonated with my own experiences working as a volunteer with Kavieng Community Based Corrections ('CBC') in PNG's New Ireland Province. During my first three months I encountered numerous instances of police violence against youths, the most serious being the fatal shooting of an unarmed 17-year-old boy.⁷ Within Kavieng CIS, in three separate incidents, young inmates were brutally disciplined following their escape and recapture — one was beaten to death by CIS officers; another shot in both legs and a 16-year-old was forced to spend six months in solitary confinement. I also met boys within this prison serving up to two-year sentences for such minor crimes as breaking a toilet bowl or throwing a small stone at a car.⁸

Ironically, State brutality against juveniles is a contributing factor to problems of violence and lawlessness in PNG. When police and CIS officers employ unlawful violence, the young receive an implicit message that violence represents a legitimate means of resolving disputes or imposing one's will.⁹

Consequently, '[State] violence fuels criminal violence in a reinforcing spiral that becomes increasingly difficult

to break'.¹⁰ Rising crime reduces legitimate economic development 'which, in turn, leads to further crime and so on'.¹¹

In addition, such violence elicits a rupture in the already fragile bond between State and young people. This relationship is especially prone to break down as Papua New Guinean civil society at large has little faith in a government which is popularly perceived as corrupt, ineffective,¹² and largely responsible for the widening gap between rich and poor¹³ and 'the law' and 'justice'.¹⁴ This relationship is also prone to weakness because, long before colonial rule in PNG, "'traditional" Melanesia perceptions and practices of justice reflected the social and political organisation of small, essentially "stateless", societies' which diffused power throughout the social body rather than concentrating it within a central authority.¹⁵ Despite the modern State's putative power, this cultural legacy lives on in the present as the State's legitimacy and relevance is 'contested at the local level'¹⁶ especially in rural communities, which are home to more than 85 per cent of the population.¹⁷ In these more remote areas the State is regarded as 'a distant presence with uncertain relevance for everyday life'.¹⁸

In view of the above, redressing endemic police and CIS violence against juveniles is not only a pressing human rights concern, but also represents a means of restoring law and order and improving the perceived legitimacy and effectiveness of the justice system.

Juvenile Justice Reforms

In response to concerns about the treatment of young offenders, the PNG National Parliament passed the *Juvenile Courts Act 1991* ('JCA'). The JCA constitutes PNG's first legislative attempt to incorporate the *United Nations Convention on the Rights of the Child* and associated standards into its criminal justice system. The JCA also establishes a separate Juvenile Court for young people facing less serious charges. Since the JCA came into effect in 2003, the government has introduced the National Juvenile Justice Policy, the Police Juvenile Justice Policy and Protocols, and Minimum Standards for Juvenile Institutions. The implementation of the reforms is the joint responsibility of police, CIS, the courts and CBC under the guidance of the National Juvenile Justice Committee ('NJJC') and its subsidiary Provincial Juvenile Justice Working Groups.

These reforms, collectively referred to as the Juvenile Justice Reforms, promote:

REFERENCES

1. *Juvenile Courts Act 1991* (PNG), Section 2.
2. See Human Rights Watch ('HRW'), *Making Their Own Rules - Police Beatings, Rape, and Torture of Children in Papua New Guinea* (2005); HRW, *Still Making Their Own Rules - Ongoing Impunity for Police Beatings, Rape, and Torture in Papua New Guinea* (2006).
3. UNICEF, *At a glance Papua New Guinea Statistics* <http://www.unicef.org/infobycountry/papuang_statistics.html> at 3 March 2011.
4. UNICEF, *PNG Children in Conflict with the Law: An Assessment of the Juvenile Justice System* (2001) 5.
5. Ibid.
6. Ibid.
7. 'Another cold, lonely Christmas', *Post Courier* (PNG), 5 January 2011 <www.postcourier.com.pg/20110105/feature.htm> at 11 August 2011.
8. Interview with two juvenile detainees (Kavieng CIS, 14 December 2010). Court records held at Kavieng District Court on inspection supported their allegations.
9. Sinclair Dinnen, 'Building bridges: Law and Justice Reform in PNG' (2001) 11 *Society and Governance in Melanesia* 01/3 Working Paper <http://ips.cap.anu.edu.au/ssgm/publications/working_papers/wp1list.php?searchterm=2001> at 11 August 2011.
10. Ibid.
11. Ibid.
12. Grant Walton, *Rural Peoples' Perceptions of Corruption in Papua New Guinea* (2009) 8 <<http://www.transparencypng.org.pg/CPS%20Folder/CPS%20Final%20Qualitative%20Report%20to%20AusAID.pdf>> at 11 August 2011.
13. Carol Kidu, 'Reflections on change, ethnicity and conflict: Family and ethnic violence in Papua New Guinea' (2000) 53 *Development Bulletin* 38.
14. Dinnen, above n 9, 2.
15. Ibid 3.
16. Donovan Storey, 'Urban Governance in Pacific Island Countries: Advancing an Overdue Agenda' (2005) 4 *Society and Governance in Melanesia Discussion Paper* <<http://ips.cap.anu.edu.au/ssgm/>

It is noteworthy that an estimated 50 per cent of [National Court backlog] cases are negligence and human rights complaints against police.

- diversion and mediation, drawn from traditional Melanesian and restorative justice, as an alternative to imprisonment and court proceedings;
- rehabilitation-focused sentencing;
- fast-tracked police processing of juvenile cases and the reduction of unnecessary pretrial detention;
- training of volunteer juvenile advocates;
- increased monitoring of juvenile conditions within police lock-ups and CIS facilities through regular inspections by Juvenile Court Magistrates;
- separate and upgraded CIS and police lock-up facilities for juveniles; and
- prevention of the abuse of juveniles within the criminal justice system.

Successes

Evidence collected by the NJJC suggests that there has been a marked decrease in juvenile incarceration rates in provinces where a Juvenile Court has been established.¹⁹ Much of the success of the Juvenile Court in improving youth justice in PNG is due to the fact that it only takes one properly-trained Magistrate to significantly improve the sentencing and rehabilitative outcomes of the many young people appearing before their court. For example, since the opening of New Ireland's first Juvenile Court in February 2011, I have witnessed children charged with petty crimes who formerly would have been jailed by the District Court, now being offered diversion or fined.

Additionally, the NJJC has reported increased pre-court diversions (including restorative justice based mediation) in provinces where Juvenile Justice Reforms have been implemented, and particularly where trained Police Juvenile Officers are active.²⁰

Ongoing challenges

Since the advent of the Juvenile Justice Reforms, it appears that there has not been a commensurate decrease in instances of police and CIS abuse of young people. I say 'appears' because there has been very limited empirical data collected about the incidence of human rights violations against juveniles since the introduction of the reforms.

In May 2010 the UN Special Rapporteur on Torture presented preliminary findings on his mission to PNG and reported:

- 'systematic beatings of detainees upon arrest or within the first hours of detention, including during

interrogation. ... Widely practiced methods include[d] beatings with car fan belts, bush knives, gun butts, iron rods, wooden sticks, stones, punching and kicking';

- 'police beatings often reached the level of torture, as defined in the *United Nations Convention against Torture*';
- for the most part, the Juvenile Police Protocols were simply not being implemented;
- numerous complaints by incarcerated juveniles that they were subjected to beatings and given inadequate food rations; and
- juvenile males often being mixed with adults in prisons and in Police lock-ups.²¹

Such findings beg the question: why have the Juvenile Justice Reforms failed to protect children from these abuses? It is submitted that the key reasons are:

- lack of financial and disciplinary incentives for law enforcement officers *not* to abuse children;
- shortcomings in CIS and Police resources and infrastructure;
- insufficient oversight of detained juveniles;
- lack of effective legal advocacy for juveniles;
- failure to utilise community-based informal and semi-formal institutions; and
- cultural barriers to change.

Lack of financial or disciplinary incentives

Within PNG only the Police Internal Affairs Division ('PIAD') has the power to discipline police, aside from criminal prosecution in court which is rare.²² In practice, PIAD resolves less than 15 per cent of its complaints and lengthy procedural delays are usual.²³ Police are almost never punished for use of excessive force, rape, or torture.²⁴ Even where police are actually suspended following misconduct they are often illegally reinstated.²⁵ Similarly, the CIS system lacks an effective complaints mechanism.²⁶ Hence, police and CIS officers are able to breach juveniles' human rights with very little risk of disciplinary consequences.

Additionally, while PNG's Constitution vests citizens with the right to sue the State and its officers for breaches of human rights in the National Court,²⁷ such provisions have little normative effect on police behaviour — aside, perhaps, from the shaming effect of naming individual perpetrators. This is because police are not usually a party to these proceedings, and any resulting damages do not appear in the police budget.²⁸

Further, human rights litigation in PNG is currently an ineffective means of responding to complaints against

publications/discussion_papers/dplist.php?searchterm=2005> at 11 August 2011.

17. 85% of PNG's population live in rural and remote areas: AusAID, *Transport in PNG*, 3 June 2010, <<http://www.ausaid.gov.au/country/png/transport.cfm>> at 19 April 2011.

18. Geoffrey White, 'Indigenous Governance in Melanesia' (2007) 4 *State, Society and Governance in Melanesia Discussion Paper* <http://ips.cap.anu.edu.au/ssgm/publications/discussion_papers/dplist.php?searchterm=2007> at 11 August 2011.

19. National Juvenile Justice Working Committee/UNICEF, *Baseline data and national trends in the use of detention and diversion for children who come into conflict with the law* (2008) 3.

20. Ibid.

21. Manfred Nowak, UN Special Rapporteur on Torture presents preliminary findings on his Mission to PNG, 26 May 2010 <www.un.org.au/UN-Special-Rapporteur-on-Torture-presents-preliminary-findings-on-his-Mission-to-PNG-news197.aspx> at 18 February 2011.

22. HRW, above n 2 (2005) 84.

23. Dinnen, above n 9, 7.

24. HRW, above n 2 (2006), 31.

25. See 'SSD policemen deny allegations', *Post Courier* (PNG), 14 January 2010 <www.postcourier.com.pg/20110117/news03.htm> at 14 February 2011.

26. Nowak, above n 21.

27. Constitution of PNG vests Papua New Guinean citizens with the right to freedom (s 32), protection from inhuman treatment (s 36), the right to liberty (s 42) and freedom from arbitrary search and entry (s 44).

28. PNG Institute of National Affairs, *Report of the Royal Papua New Guinea Constabulary Administrative Review Committee to the Minister for Internal Security Hon. Bire Kimisopa* (2004) 44 <<http://www.inapng.com/Police%20Review%20Report%20final.pdf>> at 19 August 2011.

police and CIS because the National Court lacks the capacity to adjudicate cases in a timely fashion. At present, a backlog of approximately 15 000 to 20 000 cases obstructs the court. It is noteworthy that an estimated 50 per cent of these cases are negligence and human rights complaints against police.²⁹ In the face of this backlog, the capacity of the court to entertain these cases is limited. National Courts are found within just seven of PNG's 18 provinces. Further, the National Court circuit, which services the remaining 11 provinces as well as the Autonomous Region of Bougainville, has only one judge devoted to human rights cases. In 2010 the court produced just four reported human rights judgments.

Given the infrequency of National Court circuits within the provinces, the lack of judges to hear such cases and the complexities of human rights litigation, swift resolution of human rights abuses is beyond the reach of the limited resources of most Papua New Guineans, especially juveniles.

As a panacea to this backlog of cases, in 2008 PNG's parliament passed the *National Court (Amended) Act* to empower the court to order mediation at any stage in proceedings, irrespective of the consent of the parties. This new alternative dispute resolution ('ADR') scheme is still in its infancy — the National Court is yet to accredit enough mediators to carry out the potential volume of mediations required. However, it is submitted that if and when the new ADR system is fully operational, such mediation is largely inappropriate for human rights matters that involve brutality against youths. This is because the often private settlements that result cannot broadcast public opprobrium against misuse of State power.

The lack of effective human rights complaints and disciplinary mechanisms creates 'an environment of impunity fueling these [violent] practices.'³⁰ In this context, it is little wonder that the Papua New Guineans have little trust in the avenues of complaint available to them.

Shortcomings in police and CIS resources and infrastructure

CIS institutions are generally in poor repair, understaffed and overcrowded.³¹ For example, within Kavieng CIS children are forced to sleep on bare concrete in cramped conditions and are often forced to share prison cells with adults due to overcrowding. Across PNG, CIS escapes are common due to lack of prisoner supervision.³²

Police also have significant resource limitations, including decrepit police stations that are frequently condemned by health authorities as unfit for human habitation, a lack of training, inadequate access to vehicles, and most importantly an insufficient police force which has not increased since PNG's independence in 1975 despite rising crime rates and a doubling of the population.³³

For police, the 'superficial "strength" of reactive and violent policing helps disguise the actual weakness of the institution.'³⁴ As police lack the resources

to regulate behavior or investigate crime, arbitrary violence predominantly against the young becomes an essential means by which police can attempt to regulate the citizenry through fear, and gather inculpatory evidence through forced confessions.

Similarly, within the CIS system, violence has become instrumental in controlling overcrowded CIS populations and dissuading prisoners from escaping. Without improving police and CIS resources, the lot of juveniles cannot improve.

Insufficient oversight of detained juveniles

Juvenile abuse and hardship within CIS institutions and police lock-ups usually go unseen due to lack of formal oversight and investigation. While the Juvenile Court, the Ombudsman and police have attempted to improve the monitoring of juvenile conditions, the reality is that almost no one is watching.

The Visiting Justice Scheme

With a view to improving the oversight of juveniles, in 2006 PNG's Chief Magistrate directed all Juvenile Court Magistrates to commence inspections of juvenile detention facilities (including police cells, rural lock-ups, prisons, and other remand or post-conviction institutions) in their provinces under the Juvenile Visiting Justice Scheme. This scheme is intended to monitor juvenile treatment and conditions and redress human rights violations.³⁵

Progress was initially slow — the scheme stalled during mid-2006 around the question of Juvenile Magistrates' legal authority to conduct the inspections. The scheme commenced in late 2007 and one inspection occurred.³⁶ The following year Magisterial Services reported to the NJJC that 32 inspections were conducted across 12 provinces.³⁷ However, over the last two years, the frequency of inspections has declined — in 2009 only nine were conducted while in 2010 none were reported.³⁸ Consequently, the scheme currently contributes little towards the ongoing monitoring of incarcerated juveniles throughout PNG.

Court Protocol Checklist

In 2006 Juvenile Courts throughout PNG agreed to adopt the *Juvenile Court Protocol Checklist* — a tool for Magistrates to monitor the legality of the arrest, detention and imprisonment of juveniles. Where the checklist reveals improper practice the presiding Juvenile Court Magistrate is required to notify the head of the agency concerned and request that the problem be rectified.³⁹

When the checklist was first piloted magistrates commented that it took too long to complete.⁴⁰ The checklist contains 21 questions, many of which are repetitive or fail to capture pertinent information. Four years since its inception, the Port Moresby-based National Central District ('NCD') Juvenile Court now appears to be the only court still using this document.

Despite its shortcomings the checklist has been quite revelatory of police practices within Port Moresby. During one month in 2008, 16 out of 20 juveniles

29. PNG Law and Justice Sector, 'Police tops list for finance payouts' (Media release, undated) <<http://www.lawandjustice.gov.pg/www/default.asp?guiValue=1433288B-DB8C-43EB-8768-EBB12C81E768>> at 11 August 2011.

30. Nowak, above n 21.

31. Dinnen, above n 9, 6–7, 12–16.

32. '115 escape in a month', *Post Courier* (PNG), 20 January 2010. <<http://www.postcourier.com.pg/20100120/news06.htm>> at 14 February 2011.

33. Dinnen, above n 9, 14–15.

34. Ibid.

35. Magisterial Services, *Draft Visiting Magistrate's Protocol* (2009) 3.

36. NJJC, above n 19, 3.

37. Ibid.

38. More visits may have been conducted but if so this was not communicated to the NJJC or the Director of CBC as is mandated by the *Draft Visiting Magistrate's Protocol* (2009). I attempted to make contact with Magisterial Services but was unsuccessful.

39. *Draft Visiting Magistrate's Protocol* (2009), 20.

40. Ibid 43.

Within PNG and across Melanesia more broadly the public is generally unaware that police violence is unlawful and it is rarely a political issue.

appearing before the court revealed that they had been subjected to police violence and forced to make confessions of guilt.⁴¹

The Ombudsman

The PNG Ombudsman Commission has the power to investigate human rights violations, including the power to go into police lock-ups and prisons, but has until recently focused primarily on official corruption.⁴²

Since 2009, the Ombudsman has conducted several informal investigations into alleged cases of police misconduct involving juveniles. The investigations all resulted in police being counselled but no other disciplinary action was taken or official reports drafted or tabled.⁴³

At present the Ombudsman's Human Rights Desk only has two investigative staff, both of whom are based in Port Moresby. Clearly the Ombudsman does not have the capacity to play a significant role in investigating systemic abuse against juveniles in PNG's justice system, especially outside of NCD.

The Police Juvenile Monitoring Unit

Similarly, the Police Juvenile Monitoring Unit, intended to monitor police adherence to the Juvenile Police Protocols, can only play a very limited role in monitoring juveniles in conflict with the law. The NCD-based unit, established in 2006, has a small staff and lacks the ability to operate beyond Port Moresby. Since its inception the unit has struggled to obtain police cooperation and relies on 'persuasion and mentoring' as the filing of formal complaints proved ineffective.⁴⁴

In summary, with no one watching and no risk of interference, CIS and police are free to do as they please. The current invisibility of detained juveniles can only exacerbate their vulnerability to harm.

Lack of effective legal advocacy for juveniles

During pre-trial investigations, the presence and assistance of advocates play a significant role in reducing defendants' risk of harm and torture from police and prison wardens.⁴⁵ Additionally, without advocates juveniles often have great difficulty expressing their views before the court. For example, I have met several young men within the juvenile section of Kavieng CIS who told me that, while they disputed the allegations against them, they felt they had no choice but to remain silent in court and plead guilty.⁴⁶ Juveniles often feel unable to address the court due to shame and embarrassment, intimidation in the

presence of a magistrate considered a 'bosman' or 'bosmeri' and because they may have never spoken in a public forum before.⁴⁷

Office of the Public Solicitor

Within PNG, juveniles are ineligible for free legal assistance from the Office of the Public Solicitor ('OPS') except where they face serious charges or wish to appeal a custodial sentence imposed in a District Court. Even where juveniles are eligible for legal aid they often must wait for months to see a lawyer if they are remanded within a province without an OPS office.

Voluntary Juvenile Court Officers

Instead of lawyers, the Juvenile Justice Reforms rely heavily on Voluntary Juvenile Court Officers ('VJCOs') under the supervision of CBC, to advocate for juveniles within individual communities.⁴⁸ In effect, the JCA requires VJCOs to act as de facto juvenile lawyers. VJCOs are legally recognised officers of the court who are legislatively empowered to:

- enter a police station, lock-up or any other place of detention to speak to a juvenile;
- be present when police are interrogating a juvenile;
- advise a juvenile about their legal rights including their right to remain silent;
- question an arresting officer; and
- advocate for a juvenile within court.⁴⁹

Armed with these broad powers, in theory, VJCOs have the ability to significantly improve the oversight of juveniles as well as advocate for their rights and proper treatment both in and outside of the courtroom. However, while many VJCO trainings have been held throughout PNG since 2004, VJCOs have been largely ineffective as juvenile advocates over the long term.

First, VJCOs commonly lack the skill base necessary to carry out their roles successfully — the standard three day VJCO training is not sufficient to coach someone to act in the role of juvenile advocate.

Second, because VJCOs are not formally employed, they often lack legitimacy in the eyes of police and CIS who frequently refuse them access to juveniles.⁵⁰

Third, in practice, Papua New Guinean volunteerism is a radically different thing from its counterpart in developed Western nations. VJCOs often lack formal employment or regular income. Consequently it is unsurprising and understandable that VJCOs often make requests for travel allowances and permission to

41. NCD Juvenile Court Checklist, completed in September 2008.

42. HRW, above n 2 (2006), 44.

43. Interview with Patrick Niebo, Team Leader Anti-Discrimination & Human Rights Unit PNG Ombudsman (Telephone interview, 7 March 2011).

44. HRW, above n 2 (2006), 40.

45. For instance see: UN, *Research on the Implementation by Armenian courts of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2008) <http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/AM/UNCTA_UPR_ARM_S08_2010_UNCountryTeamArmenia_Document6.pdf> at 11 August 2011; Tania Branigan, 'Chinese police chief's widow alleges torture after he dies in custody' *The Guardian* (UK), 14 January 2011 <www.guardian.co.uk/world/2011/jan/14/china-police-chief-dies-custody> at 11 August 2011.

46. Interview with juvenile detainees (Kavieng CIS, 9 February 2011).

47. Interview with Juvenile Justice Coordinator, CBC (Telephone interview, 19 May 2011).

48. Dept of Justice and Attorney General, *National Juvenile Justice Policy* (2006) 13.

49. *Juvenile Courts Act 1991* (PNG) s 12.

50. HRW, above n 2 (2006), 44.

use office resources for personal use in consideration for performing their duties. In general CBC offices are incapable of reimbursing such expenses, which often results in VJCOs discontinuing their role.

Fourth, and finally, at its current level of resourcing, CBC is unable to provide adequate supervision to VJCOs once they have been trained. In 2008 an Australian volunteer based with the Juvenile Court in Goroka commented that:

[u]nfortunately, as I have found is often the case with CBC offices across PNG, the volunteers are trained and then there is no follow-up, ongoing support or communication between the CBC office and the volunteers.⁵¹

Given the ineffectiveness of VJCOs as juvenile advocates, other options must be considered to assist young people who 'usually have more difficulty than adults making complaints'⁵² about their treatment and finding their voice in front of a courtroom.

Failure to utilise community-based informal and semi-formal institutions

NGO and academic discourse surrounding juvenile justice issues, like much discussion about law and order in PNG, has largely focused on the deficiency of State institutions to safeguard children from harm. Hence, institutional capacity building and improved mechanisms to divert children out of these formal institutions (such as the use of restorative justice based mediation) are prescribed to remedy this situation.⁵³ However, the primacy of the local community in PNG, as opposed to the contested authority of the State, suggests that sustainable solutions to the plight of juveniles may originate instead from informal and semi-formal institutions located within the community.

Informal means of community resolution vary from place to place but are likely to include a combination of: 'negotiation or mediation by kin, "traditional" leaders or church officials; village moots; or the decisions of local komitis' and will often involve some form of restorative justice.⁵⁴ However, Village Courts, established at the end of the colonial era and empowered to adjudicate disputes through relying upon custom,⁵⁵ provide the most common mechanism through which Papua New Guineans living in rural communities can resolve disharmony and respond to anti-social behaviour in their communities.⁵⁶

These semi-formal institutions have the power to hear both minor civil and criminal cases but cannot jail juveniles without District Court approval.⁵⁷ The reach and case turnover of the Village Court system is impressive. In 2004, 1082 Village Courts dealt with approximately 600 000 cases⁵⁸ and covered approximately 84 per cent of the country including NCD. If not always achieved in practice, these courts have 'enormous potential for developing restorative [and mediation based] solutions'⁵⁹ especially as their embeddedness in the community enhances their perceived legitimacy in the eyes of court users.

Since the advent of the Juvenile Justice Reforms, Village Courts have been ignored as an alternative to the formal criminal justice system for juveniles due

to 'the subordination of local institutions within the larger nation-building project [which] has prevailed throughout the post-Independence period.'⁶⁰ As a result of this neglect there is limited cooperation between community police and Village Court magistrates. Police, lacking understanding of the particular role of these courts,⁶¹ often remove juveniles from their communities without first consulting village elders or magistrates, which undermines opportunities for community-based mediation.

Village Courts are also hindered from taking a lead role in preventing juveniles from entering the criminal justice system due to:

- arbitrary demarcation between cases Village Courts can and cannot hear;
- Village Courts' own confusion about the extent of their jurisdiction and powers to imprison;⁶² and
- fears that Village Courts may not allow for sufficient juvenile participation or may impose 'corporal punishment or harmful traditional practices'.⁶³

While Village Courts may lack authority in the eyes of some, if properly supported and used in conjunction with local police these semi-formal institutions may provide the most workable solution for diverting children away from a potentially harmful State system.

Cultural barriers to change

Within PNG and across Melanesia more broadly the public is generally unaware that police violence is unlawful and it is rarely a political issue, 'as though people find it either inevitable or, perhaps regretfully, necessary'.⁶⁴ It is probable that the commonality of such violence, in a context of deteriorating law and order, has fed these perceptions. In addition there is a lack of awareness within PNG's leadership of the problem of State violence against juveniles. In 2006, then Prime Minister Sir Michael Somare, when asked about police violence against children, said that although there were some instances, he had seen the same things and worse in Australia.⁶⁵

Importantly, until Papua New Guineans and their leaders are better informed about juvenile rights and children's rights more broadly, the current acceptance of the status quo will continue to represent a significant barrier to the protection of juveniles from systemic abuse.

As an aside, there is a common misconception that traditional Melanesian customary law necessarily involves the dispensation of violent retribution, the corollary of this being that police are simply redeploying these values in a post-colonial police force. In fact, traditional Melanesian justice may or may not involve violence, but more typically involves repairing fractured relationships in the community — in other words, restorative justice.⁶⁶

Proposed solutions

It is beyond the scope of this article to posit detailed solutions to the precarious situation of youth in the PNG criminal justice system.

51. Steven Plummer, volunteer based with Magisterial Services in Goroka, *Final Report*, 2008 [unpublished].

52. HRW, above n 2 (2006), 37.

53. See Dept of Justice and Attorney General, above n 48.

54. Dinnen, above n 9, 13.

55. *Village Court Act 1989* (PNG), s 57.

56. Dinnen, above n 9, 9.

57. *Village Court Act 1989* (PNG), ss 69–70.

58. Justice Advisory Group, *Law and Justice Sector, Village Court System of Papua New Guinea* (2004) 14.

59. Dinnen, above n 9, 9.

60. Ibid 4.

61. Justice Advisory Group, above n 58, 14.

62. Dinnen, above n 9, 9.

63. Dept of Justice and Attorney General, above n 48, 30.

64. Ian Fraser, 'Forgiveness is Melanesian for Individualism and other bad translations' (2008) 14 *Revue Juridique Polynésienne* 43, 46.

65. Cynthia Banham, 'Somare Attacks the System that Spends PNG Aid', *Sydney Morning Herald* (Sydney), 19 October 2005.

66. Sinclair Dinnen, above n 9, 13.

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However, any long-term reforms must involve:

- government and aid-donors engaging the community in human-rights-focused dialogue and adopting a course of action adhering to the *United Nations Convention on Torture*;
- a commitment to increased juvenile justice training and infrastructure for both police (including the Juvenile Monitoring Unit) and CIS;
- the employment of CBC-supervised Juvenile Court Officers across PNG;
- the reinvigoration of the Visiting Justice Scheme and strengthening of the Ombudsman's Human Rights Desk to prioritise and formally investigate claims of human rights abuse against juveniles; and
- the development of strategies to enhance the capacity of the Village Courts to deal with juvenile offenders, and improve the linkages between these semi-formal institutions and the criminal justice system.

In order to institute real incentives for police and CIS officers not to abuse children, the PNG government should institute a localised, fast-tracked 'one stop shop' for human rights complaints and disciplinary action against State officers which allows complainants to opt out of the National Court System. There is no reason why Senior Provincial Magistrates from Provincial District Courts could not carry out this function if they were provided with sufficient training and resources to do so.

Any new dispute resolution process should:

- compel alleged human rights abusers to be involved in the process;
- render alleged perpetrators and their supervisors at least partly liable for the payment of any awarded compensation;
- publicise any settlement or finding; and
- incorporate traditional Melanesian values and restorative justice to the extent that this is consistent with the promotion of human rights.

Any proposed solution to the injury of young people by the criminal justice system must necessarily involve making police, CIS and courts accountable to and involved in the communities they serve so PNG can begin to mend the fractured relationship between the State, the local community and the young.

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